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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD MARTIN,

Defendant and Appellant.

2d Crim. No. B255253
(Super. Ct. No. 14PT-00016)
(San Luis Obispo County)

Edward Martin appeals from the judgment declaring him a mentally disordered offender (MDO). (Pen.Code, § 2962.)¹ He contends that his conviction of arson in violation of section 451, subdivision (c) does not qualify as an MDO offense because the crime did not "pose[] a substantial danger of physical harm to others." (§ 2962, subd. (e)(2)(L).) We affirm.

Facts

Based on her review of a police report, a psychologist, Brandi Mathews, testified as follows: On September 6, 2010, appellant set fire to a bush in a "field located near businesses. . . . [A] few hours later [he] . . . set a tree on fire in the same field" The fire department extinguished both fires. The field was "grassy" and "very dry." A "lot of transients would sleep" there. The fires did not damage a structure or injure anyone. Persons at a grocery store saw appellant set the fires.

¹ All statutory references are to the Penal Code.

Discussion

Appellant's arson conviction qualifies as an MDO offense only if the underlying "act[s] posed a substantial danger of physical harm to others." (§ 2962, subd. (e)(2)(L)' see *People v. Kortesmaki* (2007) 156 Cal.App.4th 922, 928) We "must determine whether, on the whole record, a rational trier of fact could have found . . . beyond a reasonable doubt" that appellant's acts posed a substantial danger of physical harm to others. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082.) We must "consider[] all the evidence in the light which is most favorable to the People, and draw[] all inferences the trier could reasonably have made to support the finding. [Citation.]" (*Ibid.*)

A rational trier of fact could find beyond a reasonable doubt that appellant's acts posed a substantial danger of physical harm to others. Since appellant set the fires in late summer in a very dry, grassy field, there was a substantial risk that the fires would spread quickly. Businesses and people were nearby. Persons at a grocery store were close enough to see appellant set the fires. Transients would sleep in the field. According to the police report, an officer made "sure that everyone had evacuated" the area where the fires occurred.

Disposition

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Ginger E. Garrett, Judge
Superior Court County of San Luis Obispo

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

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